
Formal Action

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE

FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

)

STATE OF TENNESSEE,))

Plaintiff,)

)

v.)) No.

)

SEARS, ROEBUCK AND CO., a)

foreign corporation,)

)

Defendant.)

)

AGREED FINAL JUDGMENT

Plaintiff, the State of Tennessee, by and through John Knox Walkup, the Attorney General and Reporter, on behalf of the Division of Consumer Affairs of the Department of Commerce and Insurance, and Defendant, Sears, Roebuck and Co., a New York corporation, including its subsidiary, Western Auto Supply Company ("Western Auto") (hereinafter collectively referred to as "Sears" or "Defendant"), as evidenced by their signatures, do consent to the entry of this Judgment and its provisions. Without admitting liability, the Defendant enters into this Judgment solely to avoid the time and expense associated with litigation. The Defendant expressly waives ten day notice of the State's intention to file an action pursuant to Tenn. Code Ann. § 47-18-108(a)(2). This is an Agreed Final Judgment ("Order" or "Judgment") for which execution may issue. This Order only resolves matters set forth in the State's Complaint. Defendant hereby accepts and expressly waives any defect in connection with service of process issued on the Defendant by the State. IT IS HEREBY AGREED, ORDERED, AND ADJUDGED THAT:

1. JURISDICTION

1.1 Jurisdiction of this Court over the subject matter and over the Defendant for the purpose of entering into and enforcing this Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the parties to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for (A) the construction, modification or execution of this Order, (B) requesting modification of any of the injunctive provisions of this Order if the modification is required to comply with bankruptcy law, including modifications that may be required to comply with future amendment to the Bankruptcy Code, (C) requesting modification of any of the injunctive provisions because of changed circumstances requiring a modification to enable Sears to conduct business in a lawful manner; and (D) the enforcement of this Order and punishment of violations thereof. Defendant agrees to pay all court costs and reasonable attorneys' fees associated with any successful petitions to enforce any provision of this Order against Defendant. However, Sears may challenge the amount of court costs and attorneys' fees sought by the State under this provision.

2. VENUE

2.1 Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Order is solely in the Chancery Court of Davidson County, Tennessee.

3. PARTIES

3.1 Defendant, Sears, Roebuck and Co., warrants and represents that it is the proper party to this Order. Defendant further acknowledges that it understands that the State expressly relies upon this representation and warranty, and that if it is false, unfair, deceptive, misleading or inaccurate, the State has the right to

move to vacate or set aside this Order, or request that Defendant be held in contempt, if the State so elects.

3.2 Defendant, Sears, Roebuck and Co., represents that it is the true legal name of the entity entering into this Order. The Defendant understands that the State expressly relies upon this representation and if said representations are false, inaccurate, deceptive, unfair or misleading the State has the right to move to vacate or set aside this Order or request that the Defendant be held in contempt, if the State so elects.

4. PERMANENT INJUNCTION

For purpose of paragraphs 4.1-4.11, the following terms have the meanings set forth below:

A. "Sears" means Sears, Roebuck and Co., including its subsidiary Western Auto, and their employees, officers, directors, agents, and representatives; their successors and assigns; and any person with actual or constructive knowledge of this judgment who acts in concert with any of them.

B. "Sears customer" means any person who owes, owed, or whom Sears contends or claims to owe, any obligation to Sears, Roebuck and Co. and/or Western Auto, as the case may be, in connection with any extension of credit made by Sears, Roebuck and Co. and/or Western Auto, as the case may be, under a credit agreement.

C. "Bankruptcy Code" means the United States Bankruptcy Code, Title 11, United States Code.

D. "Reaffirmation Agreement" means the agreement referred to in Section 524 of the Bankruptcy Code.

Accordingly, it is hereby agreed by the Defendant that immediately upon the execution of this Order, it shall be permanently enjoined and restrained from engaging in any of the following:

4.1 Attempting to solicit or soliciting any Sears customer who is a debtor in a proceeding under the Bankruptcy Code to enter into an agreement to reaffirm debt without giving the debtor and, if represented by counsel, the debtor's attorney, a statement written in plain English, in at least 12-point type, containing the following information:

A. The Sears customer is not required to reaffirm any debt;

B. If the Sears customer reaffirms any debt, the amount of the debt reaffirmed will be subject to the same finance charge that is applied to outstanding balances under the credit agreement, or, at Sears option, a lower finance charge disclosed by Sears.

C. If the Sears customer reaffirms any debt, the reaffirmation agreement will be filed with the bankruptcy court. Sears will provide the Sears customer, and, if represented by counsel, the Sears customer's attorney, with a bankruptcy court time-stamped copy of the reaffirmation agreement. If the signed

reaffirmation agreement could not be timely filed, Sears will return the original affirmation agreement to the Sears customer or, if the original was filed with the bankruptcy court, a time-stamped copy thereof, to the Sears customer, or if represented by counsel, to his or her attorney, and the reaffirmation agreement will be void and of no effect.

D. The Sears customer may rescind the affirmation agreement before the Sears customer's discharge or within 60 days of the filing of the reaffirmation agreement with the bankruptcy court, whichever is later.

Notwithstanding the foregoing, if Sears makes such solicitation through the debtor's attorney and not the debtor, Sears shall provide the statement described to debtor's attorney and request that such statement be given to the debtor, provided, however, that if at any point thereafter Sears solicits the debtor directly, Sears shall then provide the statement described above to the debtor.

4.2 Making any untrue or misleading statement to any Sears customer about the rights, obligations, benefits, or consequences to the Sears customer of not reaffirming all or any portion of the debt that Sears or the Sears customer contends is owed or may be owed to Sears.

4.3 Soliciting, obtaining, or enforcing any agreement from a Sears customer to reaffirm debt in violation of any provision of the Bankruptcy Code, including, without limitation, Sections 362(a)(6); 524(a)(2), (c), and (d); and 727(b) of the Bankruptcy Code.

4.4 Collecting or attempting to collect any debt (including any interest, fee, charge, or expenses incidental to the principal obligation) in violation of the Bankruptcy Code, including, without limitation, a debt that has been legally discharged in bankruptcy proceedings.

4.5 Failing to file all reaffirmation agreements it obtains from debtors pursuant to Sections 524 (c) and (d) of the Bankruptcy Code with the appropriate Bankruptcy court, provided that the reaffirmation agreement is received by Sears not less than five (5) business days prior to the date that the debtor's order of discharge is entered.

4.6 In the event a reaffirmation agreement was not filed before discharge in accordance with Paragraph 4.5, failing to return the original reaffirmation agreement to the Sears customer, or if the original was filed with the bankruptcy court, a time-stamped copy thereof, to the Sears customer, or if represented by counsel to his or her attorney, with a cover letter stating that the reaffirmation agreement is void and of no effect.

4.7 Failing to mail, as provided herein, a bankruptcy court time-stamped copy of the reaffirmation agreement and notice, which may be in the form of a cover letter, printed in at least 12-point type, which shall contain the following disclosures, which shall be grouped together and set forth in a clear and conspicuous matter:

A. that the Sears customer's agreement to reaffirm a debt to Sears in an amount which Sears shall disclose

in the notice has been filed with the bankruptcy court and that the Sears customer will owe this amount to Sears after the bankruptcy case is over unless the Sears customer cancels the reaffirmation agreement;

B. that the Sears customer was not required to reaffirm his or her debt and has the legal right to cancel the reaffirmation agreement;

C. that the Sears customer may cancel the reaffirmation agreement by (i) a specified date which Sears shall disclose in the notice that is the date 60 days after filing of the reaffirmation agreement or (ii) the date the bankruptcy court enters an order of discharge, whichever happens later;

D. that the Sears customer may cancel his or her reaffirmation agreement by sending a written cancellation to Sears at the address shown on the cover letter;

E. that no specific form is required to cancel the reaffirmation. Sears shall mail the bankruptcy court time-stamped reaffirmation agreement and the notice required by this paragraph by first-class mail, postage prepaid, to the Sears customer and, if represented by counsel, the Sears customer's attorney, within the earlier of (i) five business days of Sears receiving the time-stamped copy of the reaffirmation agreement directly from the court or, (ii) if the reaffirmation agreement is filed by the Sears customer's attorney and obtained by Sears, within five business days after Sears obtains a bankruptcy court time-stamped copy of the reaffirmation agreement.

4.8 Representing or implying that nonpayment of any debt will result in, or threatening to take or taking any action to effect, the seizure, garnishment, attachment, retaking, or sale of any property or wages of any person, unless Sears intends to take that action and the action is not prohibited by law.

4.9 Using a security interest for the purpose of intimidation. For the purpose of this paragraph, "intimidation" does not include (i) a statement by Sears that it intends to take action to replevy property if Sears intends to take that action and the action is not prohibited by law, (ii) the filing of secured claims in bankruptcy proceedings, or (iii) setting forth in written communications to debtors or attorneys for debtors that Sears claims a security interest in identified goods and requests a statement of intention pursuant to Section 521 of the Bankruptcy Code.

4.10 Reporting any adverse information to credit reporting agencies, or failing to request credit reporting agencies to remove any adverse information previously reported to a credit reporting agency, concerning (A) any relief granted under this judgment including restitution and the negation of agreements to reaffirm debt obtained contrary to law and (B) the failure of a Sears customer to perform under any agreement to reaffirm debt obtained contrary to law.

4.11 Ending a credit relationship with a customer based in whole or in part on Sears relinquishment of its claims to reaffirmed debt, the restitution paid to the customer, or other actions related to the customer that Sears is obliged to take under this judgment.

5. RESTITUTIONARY RELIEF

5.1 For purposes of this Judgment, the term "Affected Consumer" shall mean each individual who (i) filed a petition for relief under the United States Bankruptcy Code, (ii) listed Sears as a creditor, against whom Sears filed a claim, or who owed a debt or alleged debt to Sears, (iii) entered into an agreement purporting to reaffirm a debt to Sears, and (iv) where such agreement was not filed with the bankruptcy court prior to the order of discharge, or was filed with the bankruptcy court and was either (A) disapproved or rejected by the bankruptcy court or not approved by such court when necessary to result in the enforceability of such agreement, or (B) rescinded by the debtor within the time provided by the Bankruptcy Code. For each Affected Consumer identified pursuant to paragraph 5.2 herein, Sears shall:

- a) relinquish any claim to any unpaid portion of the reaffirmed debt and adjust the Affected Consumer's account balance to reflect the relinquishment of the claim;
- b) return to the Affected Consumer any monies paid on account of the reaffirmed debt, and any monies paid in finance charges on account of such debt until the date compensation under this paragraph is paid;
- c) reimburse the Affected Consumer for the lost time-value of the money paid, by providing the Affected Consumer with interest on the aforementioned sum at a rate of 10% per annum, for the full period for which said monies were held by Sears;
- d) not charge finance charges on new purchases, if any, made by such Affected Consumer between the date of the Affected Consumer's petition for bankruptcy and the date the account balance is adjusted in accordance with paragraph 5.1(a) and credit the Affected Consumer's account with the amount of any finance charges previously charged on purchases made after the Affected Consumer's petition for bankruptcy; and, further,
- e) waive any security interest which Sears claimed in merchandise purchased by such Affected Consumer prior to the date he or she filed a petition for relief under the Bankruptcy Code ("pre-bankruptcy merchandise") and not seek to recover any such pre-bankruptcy merchandise.

5.2 (A) Sears shall use its reasonable best efforts to affirmatively identify, and provide the restitutionary relief set forth in paragraph 5.1 to, every Affected Consumer who filed a Chapter 7 petition from January 1, 1992 through April 1, 1997, except for Affected Consumers of Western Auto. In so doing, Sears shall identify as such an Affected Consumer all persons who both owed a debt to Sears (or whom Sears claimed owed a debt) and filed for bankruptcy from January 1, 1992 through April 1, 1997, whose Sears account records indicate the existence of a reaffirmation agreement even if no original or copy of the reaffirmation agreement is located, absent contrary direct evidence that the reaffirmation agreement was filed with the bankruptcy court and not thereafter disapproved, rejected or rescinded. In the event that Sears is unable to determine from evidence available to it whether a person's reaffirmation agreement was filed, Sears shall assume that the reaffirmation was not filed and identify such person as such an Affected Consumer. Sears shall not treat as filed any reaffirmation agreement unless either (i) Sears has a physical

copy that is stamped with a court stamp reflecting its filing; or (ii) a review of either the actual court records or an electronic docket search conducted via PACER (or similar database) reflects that the reaffirmation agreement was filed and does not indicate its disapproval or rejection by the court.

(B) The payments to Affected Consumers identified pursuant to paragraph 5.2(A) shall be calculated and paid by Sears, subject to review by an independent settlement administrator ("the Settlement Administrator"). The Settlement Administrator shall be retained at Sears expense and shall be selected by Sears, subject to the approval of the Massachusetts Attorney General after consultation with other States' Attorneys General. In order to facilitate the Settlement Administrator's review of Sears payment to Affected Consumers identified pursuant to paragraph 5.2(A), Sears shall make available to the Settlement Administrator all documents, persons, and other information reasonably necessary to review Sears processes for payment to those Affected Consumers identified pursuant to paragraph 5.2(A). The Settlement Administrator's review of Sears calculation of payment to Affected Consumers, shall include testing of a statistically reliable sample of accounts identified by Sears as Affected Consumers to verify that the amounts calculated by Sears as owed to such Affected Consumers pursuant to the processes described in the written summary (described in paragraph 5.7(a) herein) were calculated in accordance with paragraphs 5.1-5.4 herein. The Settlement Administrator, within a reasonable time (not to exceed thirty days) following the date that all payments must be made to Affected Consumers pursuant to paragraph 5.8 herein, shall provide to the Attorneys General Compliance Committee (described in paragraph 5.6 herein) a written report, based upon such review, that certifies that Sears has properly calculated the amounts payable to Affected Consumers in accordance with paragraphs 5.1 - 5.4 of this Judgment and that such amounts have actually been paid to Affected Consumers.

(C) In the event that Sears payments under paragraphs 5.1(b) and (c) to Affected Consumers identified pursuant to paragraph 5.2(A) total less than \$100,000,000 when completed, Sears shall pay the difference between \$100,000,000 and the amount actually paid pursuant to such paragraphs to the State Attorneys General, to be divided among the States in the same proportion as the number of Affected Consumers in each state identified under paragraph 5.2(A) bears to the total number of Affected Consumers to be used for consumer protection purposes at the sole discretion of the Attorney General, including but not limited to, consumer education, credit or bankruptcy counseling and education, and conflict resolution programs. Such payment to the States Attorneys General, if any, shall be made not later than 30 days after the date payments to Affected Consumers identified pursuant to paragraph 5.2(A) are complete. In the event that, at the time of such payment under this paragraph 5.2(C), a Judgment between a State and Sears has not been entered, then the payment hereunder shall be divided among those States where a Judgment between such State and Sears has been entered, in the same proportion as the number of Affected Consumers in each such State bears to the total number of Affected Consumer in such states.

5.3 Affected Consumers who filed a bankruptcy petition prior to January 1, 1992, and Affected Consumers who filed a bankruptcy petition after January 1, 1992 that Sears is unable to identify pursuant to paragraph 5.2(A) herein, and Affected Consumers of Western Auto, also shall be entitled to the restitutionary relief described in paragraph 5.1, as provided in this paragraph. Payments to such Affected Consumers under this paragraph shall be made under the supervision of the Settlement Administrator, who shall require persons who may be such Affected Consumers to file a proof of claim. In order to

facilitate notice to such persons of the restitutionary relief provided herein and the proof of claim process, Sears shall publish notice in a national newspaper and in 24 major metropolitan newspapers, and provide notice to active Sears credit card customers via inserts into billing statements. On or before October 8, 1997, such an Affected Consumer must file a properly completed proof of claim with the Settlement Administrator and provide appropriate documentation of his or her bankruptcy, reaffirmation agreement, and some payment thereon, to be eligible for restitution under this paragraph. Sears shall provide clear and conspicuous instructions with the proof of claim form to explain how the proof of claim is to be completed properly, what type of appropriate documentation is required (and basic instructions as to how to obtain those documents), and when the deadline is for submission of the proof of claim form and appropriate documentation. Appropriate documentation means the following: (A) evidence of a chapter 7 bankruptcy discharge (for example, a copy of an order of discharge); (B) either (i) evidence of a reaffirmation agreement, (for example, a copy of the reaffirmation agreement, a post-petition Sears account statement, or correspondence referencing a reaffirmation agreement) or (ii) evidence of a pre-bankruptcy petition debt to Sears listed or treated in such bankruptcy (for example, a bankruptcy schedule listing Sears as a creditor, or correspondence indicating the existence of a pre-bankruptcy petition debt) coupled with evidence of some post-bankruptcy petition payment to Sears (for example, a canceled check, money order payment stub, Sears account statement reflecting a payment credit, or correspondence with Sears referencing such payment). Appropriate documentation shall also include, for each category, such documents and/or combinations of documents as the Settlement Administrator shall reasonably determine to be sufficient to satisfy the above requirements, for instance, by taking into account the claimant's stated inability to obtain the documents, and in circumstances where a claimant notifies the Settlement Administrator that he or she is unable to locate or obtain the evidence of a pre-petition debt to Sears listed or treated in such bankruptcy described above, the Settlement Administrator shall reasonably determine whether that documentation requirement is satisfied by certain account statements or credit charge receipts close in time to the claimant's bankruptcy petition. If a proof of claim received by the Settlement Administrator is not properly completed or accompanied by the required documentation, the Settlement Administrator (at Sears expense) shall send a notification to the claimant describing the deficiency, stating that the deficiency may be corrected within 30 days of the date of the deficiency notification (or by October 8, 1997, if later), and, if applicable, providing basic instructions as to how required documentation may be obtained.

If an eligible person provides to the Settlement Administrator documentary information to show that such person reaffirmed a debt to Sears after filing bankruptcy and to show the amount of payments made to Sears on account of his or her reaffirmed debt, such person shall be treated as an Affected Consumer and paid compensation in the same manner as is described in paragraph 5.1 herein. If such person does not supply such documentation, Sears shall use its reasonable best efforts to obtain the necessary information from its records, and if such information is obtained, such person shall be treated as an Affected Consumer and paid compensation in the manner as is described in paragraph 5.1 herein. If a person provides information to the Settlement Administrator indicating that he or she reaffirmed a debt to Sears, but neither such person nor Sears can provide to the Settlement Administrator information sufficient to show the amount of payments made to Sears on account of the reaffirmed debt, then such person shall be paid an amount calculated to the same percentage of that person's reaffirmed indebtedness (or pre-petition indebtedness, if the amount of reaffirmed indebtedness has not been established) as the average

percentage of reaffirmed indebtedness (or pre-petition indebtedness, as the case may be) that Sears provides as compensation to Affected Consumers who filed bankruptcy between January 1, 1992 and April 1, 1997, pursuant to paragraphs 5.1(b) and 5.2 herein.

5.4 Sears also shall make an additional payment of Twenty-Five Million Dollars (\$25,000,000.00), to be divided pro rata among all Affected Consumers based upon the amount of compensation paid to each Affected Consumer by Sears in accordance with paragraphs 5.1(b) and 5.3 (not taking into account any money payable under paragraph 5.1(c)), under the supervision and direction of the Settlement Administrator.

5.5 If any payment to an Affected Consumer is returned undeliverable, Sears shall take or cause to be taken reasonable steps, including skip-tracing, to locate the Affected Consumer. If, thereafter, the Affected Consumer is still not located (or an Affected Consumer's check is not cashed within six months), any funds payable under paragraphs 5.1 - 5.4 herein to any Affected Consumer whose last known address is in the State of Tennessee but not deliverable, pursuant to this Judgment, shall be treated as unclaimed property in the possession of the State of Tennessee pursuant to the Uniform Disposition of Unclaimed Property Act, Tenn. Code Ann. § 66-29-101, *et seq.* These funds may be delivered to the Treasurer prior to the statutory due date of one (1) year set forth in Tenn. Code Ann. § 66-29-110, covering unclaimed property held by courts, public officers and agencies. The Defendant shall provide whatever information is needed by the Treasurer to handle the funds as unclaimed properties. The Defendant shall provide the check and a report to the Attorney General and Reporter within one (1) year after entry of this Order which details the amount delivered to the Treasurer for treatment as unclaimed property under the State statute. The Defendant shall continue to provide a check (if appropriate) and this information each year as necessary to provide updated information to the Treasurer.

5.6 (A) Within six (6) months of entry of this Order, Sears shall provide to the Tennessee Attorney General an initial report containing the following information (to the extent such information is available at that time):

1) A certification, if applicable, that all restitutionary relief provided for herein due to all eligible Affected Consumers in Tennessee has been paid. The report shall also verify and certify compliance with each provision of this Order related to restitutionary relief.

2) The name and address of every Affected Consumer, as defined herein, residing in Tennessee, together with the total amount of compensation paid to such Affected Consumer under paragraphs 5.1-5.4 herein.

Such report shall be supplemented at quarterly intervals thereafter until such time as Sears certifies, in a final report (hereinafter "Final Certification Report"), that its identification of Affected Consumers pursuant to paragraph 5.2 is complete, that the Settlement Administrator has completed the processing of all timely filed proofs of claim, and that Sears has provided all restitutionary relief due to Affected Consumers in Tennessee under this Judgment.

(B) Sears shall provide for review by the Tennessee Attorney General, within 30 days of written request, all records, documents and personnel reasonably necessary to ascertain Sears compliance with the restitutionary provisions of this Judgment as to Affected Consumers in Tennessee (for example, in response to inquiries concerning specific Affected Consumers in Tennessee).

(C) Sears shall make available, at Sears expense, all records, documents, and personnel reasonably necessary to assist the Settlement Administrator in the performance of its duties under this judgment. Sears shall require that the Settlement Administrator provide to the Tennessee Attorney General, at Sears expense, within 30 days of written request, copies of records, documents and reports (other than those already produced by Sears) reasonably necessary to ascertain the performance of the Settlement Administrator's obligations under this Judgment as to Affected Consumers in Tennessee. Further, Sears shall provide to the Tennessee Attorney General a copy of all reports prepared by the Settlement Administrator upon completion of each such report.

(D) Nothing in this paragraph shall limit the Attorney General's rights to request or obtain information from Sears as otherwise provided in this Judgment or as provided by law.

(E) Sears shall also provide to each member of the Attorneys General Compliance Committee comprised of representatives of the Attorneys General of Massachusetts, California, Tennessee, Florida and Illinois (the "Compliance Committee"), one copy of each report provided to the States Attorneys General described in paragraph 5.6(A) herein. Until twelve months after the date Sears provides to each member of the Compliance Committee the Final Certification Report, Sears shall:

1) provide for review by the Compliance Committee, at Sears expense, within 30 days of written request, all records, documents and personnel reasonably necessary to ascertain Sears compliance with the restitutionary provisions of this Judgment; and

2) require that the Settlement Administrator provide to the Compliance Committee, at Sears expense, within 30 days of written request, copies of records and documents (other than those already produced by Sears), and personnel reasonably necessary to ascertain compliance with the restitutionary provisions of this Judgment by Sears and the Settlement Administrator.

5.7 (a) Sears, at its sole expense, not later than the date that all payments must be made to Affected Consumers pursuant to paragraph 5.8 herein, shall provide to the Attorneys General Compliance Committee, as defined above, a written summary (the "Written Summary") describing the process Sears used (i) to identify Affected Consumers as required by paragraph 5.2(A) herein and to locate records of people filing proofs of claim as described by paragraph 5.3 herein and (ii) to calculate the amounts owed to Affected Consumers; and (iii) to actually pay those amounts to Affected Consumers, which process has been undertaken pursuant to a Stipulated Order of the United States District Court for the District of Massachusetts dated April 21, 1997 in *United States v. Sears, Roebuck and Co.*

(b) Sears, at its sole expense, shall employ a nationally recognized firm of public accountants to do all of

the following:

(i) Perform procedures including inspecting documents and testing records to determine that, to the best of their knowledge and as a result of having performed those procedures, the methods described in the Written Summary were followed by Sears to identify Affected Consumers and to locate records of people filing proofs of claim as described in paragraph 5.3.

(ii) Conduct testing, using procedures for a sample of accounts agreed upon by Sears and the Attorneys General Compliance Committee, of a statistically reliable sample of accounts identified by Sears as containing a reaffirmation but where such account was not characterized as that of an Affected Consumer, to determine that such accounts were so characterized correctly using the process described in the Written Summary;

(iii) Within a reasonable time (but not more than 30 days) after the date that all payments must be made to Affected Consumers pursuant to paragraph 5.8 herein, report to each member of the Attorneys General Compliance Committee on the results of the procedures performed, and testing conducted as described in subsections 5.7(b)(i)-(ii) above.

(iv) Provide to the Attorneys General Compliance Committee, within 30 days of written request, and without claim of any privilege (except for the accounting firm's attorney-client privilege), copies of all records, documents, reports, and work papers obtained or prepared in connection with the duties set forth in this paragraph, and to make available to the States Attorneys General Compliance Committee a person or persons familiar with the procedure to be performed pursuant to this paragraph and with Sears methods for compliance with the restitutionary provisions of this Judgment. If documents responsive to such a request already have been produced to the Compliance Committee by Sears pursuant to paragraph 5.6 herein, the accounting firm may identify responsive documents previously produced in lieu of providing duplicate copies.

c. Not later than December 15, 1997, at Sears sole expense, representatives of Sears and the accounting firm employed pursuant to paragraph 5.7(b) shall meet with the Attorneys General Compliance Committee in Boston, Massachusetts, or such other location agreed upon in writing between Sears and the Compliance Committee, in order to provide a status report, and answer questions, concerning the accounting firm's procedures and testing of a sample of Sears accounts as described in paragraph 5.7(b) herein. Thereafter, on or about the date that the accounting firm provides to the Compliance Committee the report described in paragraph 5.7(b)(iii), Sears and such accounting firm shall again so meet (in Boston, Massachusetts or as agreed) in order to present, and answer questions concerning, the accounting firm's report.

d. Nothing herein shall limit the Attorneys General Compliance Committee's ability to seek (nor Sears ability to object to) the judicial appointment of an independent national accounting firm to audit, at Sears expense, Sears compliance with the restitutionary provisions of this Judgment in the event that the accounting firm employed by Sears fails to perform any of its required functions under this paragraph.

5.8 Except for pending disputed claims, all payments by Sears to Affected Consumers provided for by paragraphs 5.1-5.4 herein shall be made not later than January 15, 1998, or such later date as may be established by the proceedings in *Brioso v. Sears, Roebuck and Co., et al.*, United States Bankruptcy Court, District of Massachusetts, Eastern Division, Adversary Proceeding No. 97-1222-CJK or *Conley v. Sears, Roebuck and Co., et al.*, United States District Court, District of Massachusetts, Civil Action No. 97-11149-PBS, but in no event later than January 1, 1999, without further order of this Court. This obligation and Sears restitution obligations hereunder shall not apply as to any person who does not relinquish all claims that the person may have against Sears based on Sears obtaining or collecting upon a reaffirmation agreement from that person in violation of law.

5.9 Sears is responsible for all costs associated with providing the restitutionary relief to consumers as set forth in section 5 of this Order to the extent provided therein.

6. PAYMENTS TO THE STATES

6.1 Upon entry of the Massachusetts' Judgment in the Superior Court of Suffolk County, Sears shall pay Thirty-Five Million Dollars and 00/100 Cents (\$35,000,000.00) to the States Attorneys General, via a check payable to the Massachusetts Attorney General's Office. The Massachusetts Attorney General shall hold these monies, in an interest bearing account, for distribution among the States proportionally based upon the number of Affected Consumers in each State that filed bankruptcy from January 1, 1992 through April 1, 1997, identified pursuant to paragraph 5.2(A) herein, with a minimum payment to each State of Fifty Thousand Dollars (\$50,000.00), provided, however, that the identification of Affected Consumers pursuant to paragraph 5.2(A) is not complete by September 2, 1997, the Massachusetts Attorney General may distribute the money to the States proportionally based upon the number of Affected Consumers in each State identified pursuant to 5.2(A) as of September 2, 1997. Not earlier than September 2, 1997, the Massachusetts Attorney General shall distribute the relevant share of monies, including interest accrued, to each State Attorney General to be used as directed by the respective Attorney General, provided that a Judgment has been entered in state court between such State and Sears concerning Sears failure to file reaffirmation agreements during bankruptcy proceedings. In the event that a Judgment between a State and Sears has not been entered in a given State by September 2, 1997, the Massachusetts Attorney General shall return to Sears, when distribution is made hereunder, any such State's proportional share (based upon the number of Affected Consumers in such state identified pursuant to paragraph 5.2(A)) of the \$35 million or \$50,000.00, whichever is greater, together with interest accrued thereon, provided, however, that (i) such time by which a Judgment must be filed in a given state may be extended by Sears; (ii) such time limitation shall not apply where Sears has failed or refused to execute a Judgment in substantially the same form as the Massachusetts Judgment; and (iii) such time limitation shall not apply where a State and Sears have filed in state court a Judgment but such Judgment has not been approved by the Court. In any event, however, if a State has not presented to Sears, for execution and entry in state court, a Judgment substantively similar to the Massachusetts Judgment on or before September 30, 1997, unless such date is extended in writing by Sears, the Massachusetts Attorney General shall return to Sears any such State's proportional share of the \$35 million, or \$50,000.00, whichever is greater, together with interest accrued thereon.

6.2 The State of Tennessee's pro rata portion of the 35 million dollars shall be paid as follows:

(A) Sears shall pay the sum of Thirty-Eight Thousand Six Hundred Eighty-Five Dollars and 63/100 Cents (\$38,685.63) to the State of Tennessee for reasonable and appropriate attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General. Said payment shall be made payable to the State of Tennessee and shall be delivered from the funds held in escrow by the Massachusetts Attorney General.

(B) Sears shall pay the sum of Ten Thousand Dollars and 00/100 Cents (\$10,000.00) to the State of Tennessee's Director of the Division of Consumer Affairs of the Department of Commerce and Insurance. Said payment shall be provided from the funds held in escrow by the Massachusetts Attorney General by providing the Attorney General with a check made payable to the State of Tennessee. Said funds shall be used by the Director for the purpose of promoting and advertising to Tennessee consumers regarding their right to file a proof of claim to obtain refunds in this matter. The Director shall use the funds to inform consumers by promoting the proof of claim process across the State of Tennessee. If any funds remain after the Director has promoted and advertised to consumers across the State, the Division of Consumer Affairs may use any remaining sums for the purpose of general consumer education at his sole discretion.

(C) Sears shall pay the remaining sums due the State of Tennessee to the State of Tennessee's general fund as a civil penalty for Sears unfair and deceptive acts and practices described in the State's Complaint pursuant to Tenn. Code Ann. § 47-18-108(b)(3). Said payment shall be provided from the funds held in escrow by the Massachusetts Attorney General by providing the Attorney General with a check made payable to the State of Tennessee.

7. CONSUMER EDUCATION

7.1 Upon entry of the Massachusetts Judgment in the Superior Court of Suffolk County, Sears also paid Five Million Dollars and 00/100 Cents (\$5,000,000.00) which shall be held in a new interest bearing account (the "Fund Account"), created by the State Attorneys General, the monies of which shall be used for consumer education and consumer protection purposes, including education concerning consumer credit and consumer rights and responsibilities in the bankruptcy context. These funds and the interest generated therefrom shall not be commingled with other funds. Distributions from the Fund Account shall be made at the discretion of a Special Committee composed of the representatives of three Attorneys General subject to the approval of the respective Attorneys General: the Attorney General of Massachusetts, the Attorney General of California, and the Attorney General of another State which shall be selected on an annual rotating basis, in the first instance by the Attorneys General of Massachusetts and California and thereafter by all three members of the Special Committee. Such representatives of these three Attorneys General shall have knowledge and experience in enforcing consumer protection law as full time civil or criminal prosecutors of consumer law violations. The Special Committee shall give due consideration to the recommendations, if any, of the Office of the United States Trustee, regarding distributions. For ten years from the entry of this Judgment, distributions from the Fund Account shall be made solely from the interest and other returns generated by the Fund Account and no expenditures shall

be made from the principal of the Fund Account. Thereafter, the Special Committee may authorize expenditures from the principal of the Fund Account provided that: i) such authorization by the Special Committee is unanimous; and ii) in no event shall annual expenditures from the principal of the Fund Account, if authorized, exceed 5 per cent of the annual Fund Account balance. The Special Committee may also authorize an annual payment from the Fund Account to help defray reasonable administrative costs, which annual payment shall not exceed 1% of the Fund Account balance in any given year. The administrative fee, if any, shall be verified by the Special Committee as reasonable and appropriate for administrative costs actually incurred. Not less than once each year, the Special Committee shall report to the State Attorneys General concerning the Fund Account and the activities funded thereby. Within 90 days of entry of the Massachusetts Judgment in the Superior Court of Suffolk County, the Massachusetts Attorney General shall make application to the Massachusetts Court for approval by the Massachusetts Court of an Order that sets forth the procedures to be employed by the Fund Account and the Special Committee and further defines the purposes, scope, and policies of the Fund Account, its administration, and its governance.

8. REPRESENTATIONS AND WARRANTIES

8.1 The acceptance of this Order by the State shall not be deemed approval by the State of any of Defendant's advertising or business practices.

8.2 Defendant shall not represent or imply that any procedure or other acts or practices hereafter used or engaged in by Defendant have been approved, in whole or in part, by the State.

8.3 Neither Sears nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance, or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Sears.

8.4 Nothing in paragraphs 8.1, 8.2 or 8.3 shall prohibit Sears from stating to persons that Sears has entered into a settlement with the State of Tennessee resolving the State's Complaint, from stating that any specific action is required by the Order, if such is the case, or from providing copies of the Order to any person upon request.

8.5 Sears represents and warrants that the execution and delivery of this Order is its free and voluntary act and that this Order is the result of good faith negotiations. The parties warrant that they will implement the terms of this Order in good faith.

8.6 Sears represents that signatories to this Order has authority to act for and bind the Defendant.

8.7 This Order may only be enforced by the parties hereto.

8.8 The titles and headers to each section of this Order are for convenience purposes only and are not

intended by the parties to lend meaning to the actual provisions of the Order.

8.9 This document shall not be construed against the "drafter" because both parties participated in the drafting of this document.

8.10 This Order constitutes the complete agreement of the parties with regard to the resolution of the matters set forth in the State's Complaint. This Order is limited to resolving only matters set forth in the State's Complaint.

8.11 Nothing in this Order shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Order shall not bar the State or other governmental entity from enforcing laws, regulations or rules against Sears.

8.12 This Order shall be binding and effective against Sears upon Sears execution of the Order.

8.13 For a period of five (5) years from the date of issuance, Sears, Roebuck, and Co., including its subsidiary Western Auto, shall provide a copy of the injunctive provisions of this judgment to all current and future officers, employees and bankruptcy court representatives having debt collection responsibilities ("Covered Persons"), including the recovery of debt from Sears customers who have filed bankruptcy proceedings and the soliciting and obtaining of reaffirmation agreements; and shall obtain from the person receiving a copy of the injunctive provisions a signed and dated acknowledgment indicating the person's name and the fact that the person has received and read a copy of the injunctive provisions. Sears shall maintain each original signed acknowledgment for five (5) years. Sears shall provide the copy of the injunctive provisions and obtain the required signed acknowledgment within 30 days of the entry of this judgment as to current Covered Persons and before any new Covered Persons make contact with a Sears customer or the Sears customer's attorney for the purpose of collecting any debt or enforcing any security interest.

8.14 Following the expiration of the requirements of paragraph 8.13, Sears shall provide written materials reflecting the substantive content of the injunctive provisions of this Judgment to all future Covered Persons not previously subject to paragraph 8.13 before any such Covered Person makes any contact with a Sears customer or the Sears customer's attorney for the purpose of collecting any debt or enforcing any security interest.

8.15 Nothing in this Order shall limit the Attorney General's right to obtain information, documents or testimony from Sears and Western Auto pursuant to any state or federal law, regulation or rule.

9. MONITORING FOR COMPLIANCE

9.1 Subject to any properly asserted attorney-client privilege and attorney work product claims, Sears shall make available to the Attorney General, at Sears sole expense, within 30 days of the Attorney General's written request, copies of all requested documents relating to Sears compliance with this

injunction. In the event Sears needs additional reasonable time to comply with the document request and cannot agree with the Attorney General on the additional time period, Sears may apply to the court for additional time.

10. PENALTY FOR FAILURE TO COMPLY

AND SETTLEMENT OF CLAIMS

10.1 Defendant understands and acknowledges that pursuant to the provisions of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-108 (c), any knowing violation of the terms of this Order shall be punishable by civil penalties of not more than Two Thousand Dollars (\$2,000.00) for each violation, in addition to any other appropriate sanctions including but not limited to contempt sanctions and the imposition of attorneys' fees and civil penalties.

10.2 Defendant understands that upon execution and filing of this Order, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act.

10.3 Because the injunctive relief provided for in this Order requires Sears to substantially alter company-wide policies, the Attorney General agrees not to initiate any proceeding for contempt pursuant to Tenn. Code Ann. § 16-1-103 and Tenn. Code Ann. § 29-9-101 *et seq.* for a violation of the provisions of this Order identified in subsection 10.4 for the time periods therein specified without first contacting Sears counsel, describing the nature of the alleged violation, and allowing Sears no more than ten (10) business days to provide a good faith written response to such allegations. The written response shall include, at a minimum, an explanation of how the alleged violation(s) occurred, what action Sears has taken with regard to the specific consumer or consumers involved, and details of the corrective steps taken by Sears to prevent future violations.

10.4 Subsection 10.3 only applies to the following paragraphs of this Order up to the date specified:

(A) August 20, 1997, for alleged violations of paragraphs 4.11, 4.16, and 4.20.

(B) September 20, 1997, for alleged violations of paragraph 4.13.

10.5 Nothing herein shall be construed to exonerate any contempt of or failure to comply with any provision of this Order after the date of its entry, to compromise the authority of the Attorney General to initiate a proceeding for any contempt, or to compromise the authority of the court to punish as a contempt any violation of this Order. Further, nothing in subsections 10.3 or 10.4 shall be construed to limit the authority of the Attorney General to protect the interest of the State or the people of the State of Tennessee.

10.6 This Order resolves the above-captioned action and the State of Tennessee will not bring any other

action against Sears based upon the facts alleged in the Complaint.

11. PRIVATE RIGHT OF ACTION

11.1 Nothing in this Order shall affect the right of a consumer to commence a private cause of action against Sears.

12. COMPLIANCE WITH ALL LAWS

12.1 Nothing in this Order shall be construed as relieving Sears of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Order be deemed to be permission to engage in any acts or practices prohibited by such law, regulation, or rule.

13. APPLICATION OF ORDER TO DEFENDANT

AND WESTERN AUTO SUPPLY COMPANY

13.1 Defendant agrees that the duties, responsibilities, burdens and obligations undertaken in connection with this Order shall apply to Sears, to each of its officers, directors, and its subsidiary, Western Auto Supply Company and to each of its officers and directors and any and all other persons or entities acting on its behalf.

14. PAYMENT OF COURT COSTS

14.1 All court costs associated with this action and any other incidental costs or expenses incurred thereby shall be borne by Defendant. No costs shall be taxed to the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State.

IT IS SO ORDERED, ADJUDGED AND DECREED.